

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996)	
)	
Tivo's Request for Clarification or)	
Waiver of the Audiovisual Output Requirement of)	
Section 76.640(b)(4)(iii))	
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MEMORANDUM OPINION AND ORDER

Adopted: April 3, 2014

Released: April 4, 2014

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant, in part, an unopposed request from TiVo Inc. seeking waiver of the compliance date of Section 76.640(b)(4)(iii) of the Commission's rules, which requires cable set-top boxes to include a recordable, Internet Protocol ("IP")-based output.¹ This waiver is pursuant to Section 629(c) of the Communications Act² and Sections 1.3 and 76.7 of the Commission's rules,³ and will permit TiVo and cable operators until June 1, 2015 to comply. We also grant small cable operators until September 1, 2015 to comply because of the difficulty they may have obtaining compliant equipment to meet the June 1, 2015 deadline.

II. BACKGROUND

2. In 2003, the Commission adopted Section 76.640 of its rules. Section 76.640 has two purposes: (1) to "facilitate[e] the direct connection of unidirectional digital cable televisions and products to cable systems nationwide,"⁴ and (2) to "set a baseline of connectivity ensuring that cable subscribers are able to fully enjoy the range of services offered by their cable provider in a secure, digital format."⁵ The issue raised in TiVo's petition is related to the second purpose; the regulation adopted in 2003

¹ 47 C.F.R. § 76.640(b)(4)(iii). *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, 14677-9, ¶¶ 39-44 (2010) ("2010 CableCARD Order").

² 47 U.S.C. § 549(c).

³ 47 C.F.R. §§ 1.3, 76.7.

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, 20894, ¶ 17 (2003) ("2003 CableCARD Order").

⁵ 2003 CableCARD Order, 18 FCC Rcd at 20897, ¶ 24.

required cable operators to include an IEEE-1394 interface and to comply with standards that would allow subscribers to control their set-top boxes through their television set remotes via that interface.⁶

3. In 2010, the Commission realized that consumer interest in the IEEE-1394 interface had waned, and that consumers were using interfaces other than IEEE-1394 to network their consumer electronics devices. Therefore, the Commission modified Section 76.640(b)(4)(iii) of its rules to replace the IEEE-1394 requirement with one that requires cable operators to “ensure that the cable-operator-provided high definition set-top boxes, except unidirectional set-top boxes without recording functionality, shall comply with an open industry standard that provides for audiovisual communications including service discovery,⁷ video transport,⁸ and remote control command pass-through⁹ standards for home networking.”¹⁰ This rule was intended to ensure that cable subscribers could attach devices that they own to their cable boxes and control the boxes via the remotes of their owned devices.¹¹ Although the rule was originally set to go into effect on December 1, 2012, the Media Bureau granted an extension to TiVo and cable operators that lease set-top boxes to subscribers until June 2, 2014 to allow for further development of an open industry standard that complies with the rule.¹² TiVo now seeks an extension of this waiver until “compliance is achievable on an industry-wide basis that includes TiVo,”¹³ or, in the alternative, that we clarify that the rule is not in effect in the wake of the D.C. Circuit’s decision in *Echostar Satellite, LLC v. FCC*.¹⁴

⁶ 2003 *CableCARD Order*, 18 FCC Rcd at 20934 (adopting new rule 47 C.F.R. § 76.640(b)(4)).

⁷ Service discovery refers to the protocols that a retail device would use to seamlessly recognize a leased set-top box and the services (e.g., video programming) available on a home network. See *Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 25 FCC Rcd 4275, 4285-6, ¶ 30, n.53 (2010).

⁸ Video transport refers to the protocols that a leased set-top box and a retail device would use to transfer digitally encoded video from the leased set-top box to the retail device. See Internet Engineering Task Force, Audio/Video Transport, <http://datatracker.ietf.org/wg/avt/charter/> (last visited March 4, 2014).

⁹ Remote control command pass-through refers to the ability of a television to pass remote control commands entered with the television remote control through to the set-top box (rather than having to use the set-top box remote control). 2010 *CableCARD Order*, 25 FCC Rcd at 14677-9, ¶¶ 40, 44.

¹⁰ *TiVo Inc.’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, 27 FCC Rcd 14875, 14875-6, ¶ 2 (MB 2012) (footnotes in original) (“*IP-Output Waiver Order*”); 47 C.F.R. § 76.640(b)(4)(iii); 2010 *CableCARD Order*, 25 FCC Rcd at 14677-9, ¶¶ 39-44. Pursuant to section 76.640(b)(4)(ii), this output must also be “capable of delivering recordable high definition video and closed captioning data in an industry standard format.” 47 C.F.R. § 76.640(b)(4)(ii).

¹¹ 2010 *CableCARD Order*, 25 FCC Rcd at 14677-9, ¶¶ 39-44.

¹² *IP-Output Waiver Order*, 27 FCC Rcd at 14882-5, ¶¶ 14-18. The Bureau granted operators that serve 400,000 or fewer subscribers until September 2, 2014 to comply with the rule. *Id.* at 14884, ¶ 17.

¹³ TiVo Petition at 3-4 (filed January 3, 2014).

¹⁴ TiVo argues that the rule remains in effect after the *Echostar* decision and states that its request for waiver is “premised on the assumption that Section 76.640(b)(4)(iii) remains an active regulation.” *Id.* at 4; TiVo Reply at 2-3. NCTA, on the other hand, argues in its comments that Section 76.640(b)(4)(iii) is no longer effective after the *Echostar* decision but that nonetheless the cable industry is implementing the rule through continued DLNA device development. NCTA Comments at 2-4. As TiVo notes, the Commission has not yet opined on whether the rule is effective after the D.C. Circuit’s decision in *Echostar Satellite, LLC v. FCC*, 704 F.3d 992 (D.C. Cir. 2013). TiVo Petition at 2. In light of the approaching regulatory deadline, and to provide the Commission time to resolve the issue concerning the continued effectiveness of the rule, we have decided, for the reasons stated above, to grant a further extension of the deadline of Section 76.640(b)(4)(iii), without determining whether the rule remains in effect after *Echostar*.

III. DISCUSSION

4. We grant, in part, TiVo's petition. Specifically, rather than grant the open-ended extension that TiVo requests, we find that a further waiver of the IP-based output rule until June 1, 2015 is appropriate under the waiver standard set forth in Section 629(c) of the Communications Act and Sections 1.3 and 76.7 of the Commission's rules. We reach this conclusion for the same reasons relied upon in the *IP-Output Waiver Order*.¹⁵ In that order, we found that the prediction about finalized standards had not materialized, that DLNA had not finalized a specification that would provide all of the required features, and that participants expected that work to be settled in early 2013.¹⁶ Therefore, we extended the compliance deadline to June 2, 2014. The record in response to TiVo's current petition reflects that our prediction that the standard would be settled in early 2013 was incorrect.¹⁷ We now conclude, as we did in the *IP-Output Waiver Order*, that waiving the IP-based output rule to allow development of the new DLNA standard is in the public interest because it will assist the introduction of a new home networking technology.¹⁸ This conclusion has unanimous support in the record in response to TiVo's current petition.¹⁹ Based on the current record, we believe that an extension until June 1, 2015 should allow sufficient time for the standard to be finalized and for TiVo and cable operators to implement it because the standards development process is approximately one year behind the schedule we predicted in the *IP-Output Waiver Order*.²⁰

5. We also conclude that "an additional brief extension of the compliance period for small cable operators is appropriate."²¹ As we explained in the *IP-Output Waiver Order*, small cable operators typically have difficulty obtaining compliant devices in the same timeframe as large operators.²² In its reply comments, ACA indicates that this is still the case.²³ Therefore, we grant small cable companies—as defined in our rules as those that serve 400,000 or fewer subscribers over one or more cable systems²⁴—until September 1, 2015 to comply with our rule.

¹⁵ *IP-Output Waiver Order*, 27 FCC Rcd at 14882-3, ¶¶ 14-15.

¹⁶ *IP-Output Waiver Order*, 27 FCC Rcd at 14882, ¶ 14.

¹⁷ The DLNA CVP-2 guidelines that the industry plans to use were released on March 18, 2014. Press Release, Digital Living Network Alliance, The Digital Living Network Alliance Releases CVP-2 Guidelines for Viewing Subscription TV Content on Multiple Home Devices (March 18, 2014), available at <http://www.dlna.org/docs/default-source/press-releases/the-digital-living-network-alliance-releases-cvp-2-guidelines-for-viewing-subscription-tv-content-on-multiple-home-devices.pdf?sfvrsn=4>. DLNA expects that "the DLNA CVP-2 Certification program will be complete and ready to begin certification of products to the DLNA CVP-2 Guidelines in September 2014," and that "products may complete certification in the fourth quarter of 2014." Letter from Donna Moore, Executive Director, Digital Living Network Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (February 14, 2014). See also NCTA Comments at 2-4; Verizon Comments at 1-4.

¹⁸ *IP-Output Waiver Order*, 27 FCC Rcd at 14882-3, ¶ 15.

¹⁹ AllVid Tech Company Alliance Comments at 1; CEA Comments at 1; NCTA Comments at 6; Verizon Comments at 1-2.

²⁰ Compare *IP-Output Waiver Order*, 27 FCC Rcd at 14882-3, ¶ 15 with Letter from Donna Moore, Executive Director, Digital Living Network Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (February 14, 2014). See also Verizon Comments at 2-3; NCTA Comments at 2.

²¹ *IP-Output Waiver Order*, 27 FCC Rcd at 14884, ¶ 17 (granting small cable operators waiver for three months more than others).

²² *IP-Output Waiver Order*, 27 FCC Rcd at 14884, ¶ 17.

²³ ACA Reply at 1-2.

²⁴ 47 C.F.R. § 76.901(e).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 629(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(c), and Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3 and 76.7, that TiVo Inc.'s request for waiver of Section 76.640(b)(4)(iii) **IS GRANTED** to the extent described above, effective for all cable operators with more than 400,000 subscribers until June 1, 2015.

7. **IT IS FURTHER ORDERED**, pursuant to Section 629(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(c), and Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3 and 76.7, that waiver of Section 76.640(b)(4)(iii) **IS GRANTED** to the extent described above, effective for all cable operators with 400,000 or fewer subscribers until September 1, 2015.

8. This action is taken by the Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

²⁵47 C.F.R. § 0.283.